

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DEUTSCHE BANK TRUST COMPANY AMERICAS,
in its capacity as successor indenture trustee for certain
series of Senior Notes, *et al.*,

Plaintiffs,

No. 11 Civ. 4522 (RJH)

VS.

ABU DHABI INVESTMENT AUTHORITY,
et al.,

Defendants.

**PLAINTIFFS' *EX PARTE* APPLICATION FOR
APPOINTMENT OF PROCESS SERVER PURSUANT TO RULE 4(c)(3)
TO EFFECT SERVICE UNDER THE HAGUE CONVENTION**

Upon this *ex parte* application and the accompanying Affidavit of Celeste Ingalls in Support of Motion for Order Appointing International Process Server and Declaration of Jeffrey C. Fourmaux Pursuant to Local Civil Rule 6.1(d), plaintiffs respectfully that this Court enter an order, pursuant to Federal Rule of Civil Procedure 4(c)(3), specially appointing Crowe Foreign Services of Portland, Oregon (“Crowe”) to effect service of the Summons and First Amended Complaint on defendant INKA mbH a/k/a Internationale Kapitalanlagegesellschaft mbH a/k/a HSBC INKA (“INKA”) in Germany under the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Convention”). The reasons for this application are as follows:

1. Defendant INKA is a German investment company with headquarters in Dusseldorf, Germany.

2. Plaintiffs wish to effect service of the Summons and First Amended Complaint upon INKA in Germany pursuant to the Hague Convention. For this purpose, plaintiffs wish to utilize a professional process serving firm with experience in dealing with the German central authorities, and have identified Crowe as a firm that appears to have such experience.

3. Under chapter 1, article 3 of the Hague Convention, a request for service to foreign central authority must be made by a competent “authority or judicial officer.” *See* Ingalls Aff. at 2. As this provision has been interpreted by German courts, the German central authorities will not accept requests for service by persons in the United States other than a U.S. court or a person specially appointed by a U.S. court. *See id.* Accordingly, plaintiffs seek such an order specially appointing Crowe for the purpose of requesting service on INKA by the applicable German central authority.

4. This Court has authority to issue the requested order under Federal Rule of Civil Procedure 4(c)(3), which provides: “At the plaintiff’s request, the court may order that service be made . . . by a person specially appointed by the court.”

5. As required by Local Civil Rule 6.1(d), there are good and sufficient reasons why plaintiffs bring this application by a procedure other than a motion on notice. As set forth in the Declaration of Jeffrey C. Fourmaux Pursuant to Local Civil Rule 6.1(d) submitted herewith, those reasons are:

(a) The requested relief is of a ministerial or administrative nature, for which there appears to be no competent ground to oppose and which cannot cause defendants prejudice.

(b) Plaintiffs do not expect that any defendant would file opposing affidavits or answering memoranda were plaintiffs to proceed by notice of motion notifying them they must serve any opposing affidavits and answering memoranda within fourteen days of service.

(c) Proceeding by notice of motion would likely simply delay by at least 21 days—that being the required minimum period for a return date for a motion on notice under Local Civil Rule 6.1(b)—what plaintiffs expect will already be a lengthy process for completing service under the Hague Convention in Germany.

6. No prior application has been made for the relief requested herein.

WHEREFORE, plaintiffs respectfully request that the Court grant this application and enter the [Proposed] Order annexed hereto.

Dated: New York, New York
September 23, 2011

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